NO. 48659-8-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

MARGIE M. LOCKNER, a single woman, Respondent

v.

PIERCE COUNTY, a political subdivision of the State of Washington; and BLAIR SMITH, individually, and as an employee of Pierce County, Petitioners.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. PROCEDURAL HISTORY

Lockner filed a first amended complaint asserting negligence against defendants Pierce County and its employee, Blair Smith. CP 1-4. Her claim alleged that while pleasure riding on bikes with her niece on the Foothills Trail, she lost her balance and clipped the rear of her niece's bike, causing her to fall in the course of attempting to shielding her eyes from debris that emanated from a lawn mower operated by Ms. Smith, a Pierce County Parks and Recreation employee. CP 1-4.

Pierce County moved for summary judgment asserting: 1) the claims were barred by Washington State's Recreational land Use Act, RCW 4.24.200-.210; and 2) Lockner had failed to present evidence that the mower had been operated in a negligent manner or was the proximate cause of her injuries. CP 5-17. In opposing the County's motion, Lockner acknowledged the Foothills Trail was a "popular commuter route and recreational destination for bicyclists, while hikers enjoy shorter, more manageable segments of the trail," that the trail served both recreational and transportation purposes, that the trail was "open for transportation purposes, as well as recreational [purposes]" but, contended summary judgment was nonetheless improper under her interpretation of *Camicia v. Howard Wright Construction Co.* CP 49, 55, 56. Lockner contended that RCW 4.24.210 is not available where a bicycle trail is "mixed use" even

when, as she conceded, one of those uses is for recreation. *Id*.

The trial court agreed with the County and dismissed Lockner's suit. In granting summary judgment, Judge Murphy ruled as follows:

> I think Carmicia [sic], looking at it more closely, was really a specific fact -- fact specific case dealing with the I-90 corridor and the language of the transfer of the property from the federal government to the City of Mercer Island and some conditions that were placed in that transfer and requirement as to whether or not there was recreational use or showing of that or whether it was incidental.
> I think it is pretty clear from the evidence that has been presented to the Court in the materials that the primary purpose of this Foothills Trail is recreation. There may be a use for transportation or some convenient way to get between different locations that are not recreational. I think the primary purpose of it, in looking at the materials that were provided, is as recreational. I don't think the Carmicia [sic] case necessarily applies to what this Court has to decide in this case. It is an area that is under the control of the County. It is an area they restrict the hours that it is open. They can open and close it. There is no evidence of intentional injury. Appeared to be -- I think it does fall under the recreational use immunity.
> I am going to grant the motion for summary judgment.

RP 22-23. Judge Murphy dismissed claims against both Pierce County and Ms. Smith "because there is an agency relationship." RP 23-24.

Lockner timely appealed. Division Two framed the issue as: "This appeal requires us to determine whether *Camicia v. Howard S. Wright Constr. Co.* limits recreational immunity to land opened to the public solely for recreational purposes or whether the immunity extends to those lands serving multiple purposes. *Lockner v. Pierce County*, 198 Wn.App.

907, 909, 396 P.3d 389 (2017). Division Two held that to satisfy *Camicia*, a landowner could claim recreational land use immunity only when the property was opened "solely" for recreational purposes, and not where "mixed use" purposes in addition to a recreational purpose were also permitted. *Id*. at 913. As a result, the Court of Appeals held summary judgment was improperly granted and remanded to determine if the trail was "solely" open for recreational use. The Court also held that by its plain terms, RCW 4.24.210 applies to negligence and is not restricted to premises liability. *Id*. at 916-917.

II. FACTS

On July 10, 2013, Margie Lockner and her niece, Justine Jenness, were riding their bicycles single file on the Foothills Trail for recreational purposes. CP 3, 75. The trail is a blacktop path bordered by grassy areas. *Id*. While bicycling, Lockner and Jenness approached an area where, more than one hundred feet ahead of them on the path, Pierce County Parks and Recreation employee Blair Smith was mowing grass by use of a riding mower. CP 3, 38-39. Lockner and Jenness could hear the "noisy" and "quite loud" lawnmower ahead of them before they saw it. CP 23, 40, 75. At the point when they saw the lawnmower, it was a considerable distance ahead of them. CP 43-45, 47. The lawnmower did not obstruct the bicycle path, and was being operated on the grass to the right of the

paved path surface at a "fast rate" heading in the same direction as Lockner and Jenness were pedaling. CP 3, 24, 41, 46. The lawnmower was travelling faster than Lockner, who was riding her bicycle in first gear behind Jenness. CP 23-24, 25. The lawnmower was not doing anything unusual, "just mowing the lawn" while staying on the grass. CP 42.

Lockner was riding her bicycle behind her niece's bicycle. CP 76. While approaching the lawnmower from behind in effort to pass it, Lockner veered her bicycle to the left and clipped the rear wheel of her niece's bicycle, lost her balance, and sustained injuries to her knee and elbow. CP 3, 76. Lockner states that prior to clipping the rear of her niece's bicycle she removed her hand from her handlebars to shield her eyes from dust and debris that blew into her face from the lawnmower. CP 3, 25-26. The lawnmower and the large dust cloud were clearly visible from a minimum distance of 100 feet in front of Lockner and Jenness. CP 34, 39, 47. Lockner acknowledged that instead of removing her hand from her handlebars, she could have stopped suddenly. CP 35.

The Foothills Trail sits atop a historic railroad bed and snakes through the river valley southeast of Tacoma. CP 62. The 25 mile long trail is a popular commuter route and recreational destination for bicyclists, while hikers enjoy shorter, more manageable segments of the trail. *Id*. One of the most scenic sections for the unobstructed views of

nearby Mt. Rainier begins in Orting and follows the Carbon River upstream through farmland and forest. *Id*. The trail is a 12-foot wide non-motorized asphalt trail/linear park suitable for bicycles, walking, in-line skates, and wheel chairs. *Id*. It also has a soft shoulder path for equestrians. *Id*. Burlington Northern abandoned the rail bed in 1982. CP 63. The effort to establish a trail started in 1984 when a Buckley physician and community visionary organized the Foothills Rails-to-Trails Coalition to assist Pierce County Parks in building the trail. *Id*. To assemble the Foothills Trail, each segment of the trail was painstakingly purchased or, in some cases, donated to Pierce County. CP 62.

The area of the Foothills Trail where the accident occurred is open to the public for recreational purposes and is not part of a transportation corridor. CP 107-110. The area is open for recreation between the hours of 8:00 a.m. and 5:00 p.m., and closed outside those hours. CP 107, 110. The area of the trail was designed for recreation and is maintained for that purpose. CP 107-108, 110.

III. ARGUMENT

A. WHERE THE FOOTHILLS TRAIL IS HELD OPEN TO THE PUBLIC FOR A PRIMARY PURPOSE OF RECREATIONAL USE WITHOUT CHARGE, RCW 4.24.210 SHOULD BE HELD TO PERMIT IMMUNITY WHERE COMMUTER USE IS ALSO PERMITTED, AND DIVISION TWO ERRED IN CONSTRUING *CAMICIA V. HOWARD WRIGHT CONST. CO.* AS HOLDING OTHERWISE

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). *Camicia v. Howard S. Wright Const. Co.*, 179 Wn. 2d 684, 693, 317 P.3d 987, 991 (2014). A grant of summary judgment is reviewed de novo. *Campbell v. Ticor Title Ins. Co.*, 166 Wn.2d 466, 470, 209 P.3d 859 (2009). When the facts are undisputed, immunity is a question of law for the court. *Camicia*, at 693.

In Washington "[a] statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and the other defeat the manifest object, it should receive the former construction." *Roza Irrigation Dist. v. State*, 80 Wn.2d 633, 637–638, 497 P.2d 166 (1972). The manifest legislative purpose of the Recreational Land Use Act is to encourage landowners to provide free recreational areas to the public on land and in water areas that might not otherwise be open to the public. RCW 4.24.200. Neither RCW 4.24.200 nor .210 contain any proviso limiting availability of immunity where land is open for a primary recreational purpose **in addition** to other uses such as commuting.

The genesis of Division Two's error below is its misinterpretation of this court's decision in *Camicia*. While it is undisputed that the Foothills Trail is open for a "primary purpose" of recreational activities,

and that Ms. Lockner used it for that purpose, the Court of Appeals wrongly concluded that *Camicia* restricts the availability of RCW 4.24.210 to properties that are "solely" open for recreation to the exclusion of any other purpose. Regrettably, that is a misinterpretation of the majority opinion in *Camicia* that contravenes the plain text of the Recreational Land Use Act and thwarts the manifest objectives of the Act.

The majority opinion in *Camicia* did not hold that land opened for recreational purposes must exclude any other use in order to benefit from recreational land use immunity. *Camicia* addressed the I-90 bike trail in the context of whether it was opened for recreational purpose *at all*, rather than *in addition* to a transportation purpose. *Camicia*, 179 W.2d at 687. The majority in *Camicia* stated "the only question is whether genuine issues of material fact exist as to whether the trail was open for recreational purposes." *Id*. at 696. In other words, was there <u>any</u> recreational purpose to the subject portion of the I-90 trail. The issue was framed as "whether the trail served a recreational purpose **as opposed to** a transportation purpose." *Id*. (emphasis added). The issue was not framed as "whether the trail served a recreational purpose **in addition to** a transportation purpose." That the City of Mercer Island permitted bicycling on the trail was not dispositive of recreational use because the Court recognized that biking can serve a status other than recreation under

Washington law. *Id*. at 699-700. The Court observed that WSDOT had determined the I-90 trail was primarily for transportation and that WSDOT perceived any recreational use "to be minimal and fairly insignificant in comparison to its transportation function." *Id*. at 689. Further, the Court noted that the Federal Highway Administration agreed with WSDOT's characterization, at least in so far as the Homer Hadley floating bridge portion of the path leading to Mercer Island. *Id*. Of great significance to the Court was that in the course of conveying a portion of the trail to the City of Mercer Island, the quitclaim deed granted by WSDOT provided that "property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor." *Id*. at 690 (emphasis added). This Court indicated that recreational use must be a significant purpose of the land for immunity to be available, stating, "We reject the City's view that recreational immunity follows from the mere incidental presence of incidental recreational use of land that is open to the public." *Camicia*, at 697.

Division Two erred in interpreting *Camicia* as requiring that a recreational property be held open "solely" for the purpose of recreation to the exclusion of any other uses. Division Two's interpretation rested upon a flawed premise that because the *Camicia* majority chose not to expressly address the use of the word "solely" by Justice Madsen in her dissent, the

majority's silence as to that word in the dissent should be treated as if it was part of the majority opinion. *Lockner*, 198 Wn.App. at 915. It should be noted that the word "solely" does not appear in the majority's opinion in *Camicia*. Division Two further misstated *Camicia* when the Court wrote: "The *Camicia* court also stated that providing immunity for areas that are opened to the public for purposes in addition to recreation, such as transportation, 'not only undermines the statute's plain language and the legislature's intent but would also unjustly relieve the government of its common-law duty to maintain roadways in a condition reasonably safe for ordinary travel.'" *Lockner*, 198 Wn.App. at 915 (citing *Camicia* at 697. Regrettably, Division Two substituted the phrase "in addition to" whereas the *Camicia* decision instead used the phrase "other than." *See Camicia*, at 699. Division Two's characterization of the *Camicia* majority's opinion displays cautionary tentativeness, as evidenced by its statement that "the majority's opinion seems to extend recreational immunity only to those lands held open to the public solely for the purpose of recreation (i.e., immunity applies only when the lands would not be held open if the recreational use was removed or prohibited). *Lockner*, 198 Wn.App. 915-16 (emphasis added).

If the *Camicia* majority intended to prohibit immunity where recreational land also served an ancillary transportation or commuter use,

there would have been no need to remand the case on the existence of a recreational purpose. If "mixed use" was a per se prohibition on availability of immunity, the undisputed fact that the I-90 trail served a transportation purpose would have ended the inquiry -- a finding of recreational use on remand would result in a finding of "mixed use" barring immunity.

In *Widman v. Johnson*, 81 Wn.App 110, 912 P.2d 095 (1996), the plaintiff sued for injuries sustained on logging road where it was undisputed that the road was opened to the public for recreational use. The plaintiff contested whether the road, known as "the Main Line," met the recreational requirements of RCW 4.24.210 on the basis that the road "was not restricted to recreational use" and additionally served as a transportation short cut for commercial loggers. 81 Wn.App. at 114. Division One rejected that argument and upheld summary judgment, holding:

> We disagree. Every reasonable person reading this record would believe that the Main Line itself was, to use Johnson's words, a "recreational spot." Every reasonable person would also believe that Hanson had opened the Main Line for recreational use. Those matters being established, the fact that the Main Line may also have been used for other purposes (e.g., as a shortcut by non-recreating members of the public) lacks legal significance.

Widman, 81 Wn.App. at 114. It is noteworthy that this Court in *Camicia*

did not reject Division One's conclusion in *Widman*, but instead cited the decision with approval because it was clear that Hanson had opened the land at issue for recreational purposes. *Camicia*, 179 Wn.2d at 698.

This Court in *Camicia* also cited with approval *Riksem v. City of Seattle*, 47 Wn.App. 506, 736 P.2d 275 (1987), a case that concerned a bicyclist who collided with a jogger on the more than 12 mile long Burke-Gilman Trail in Seattle. In *Riksem* the plaintiff contended that application of the immunity statue to recreational cyclists was an equal protection violation because it would not apply to the non-recreating users who walked or biked on the trail for commuting purposes. *Id*. at 511-13. Despite such additional non-recreational uses of the trail, the Court of Appeals rejected *Riksem*'s argument and held that the immunity provision applied where it was undisputed that the Burke-Gilman Trail was open to the public for the purposes of outdoor recreation and Riksem was a recreational user. *Id*. at 512-13. The court then observed:

> [T]he Washington Supreme Court in *McCarver v. Manson Park and Recreation Dist.*, supra, declined to impose construction upon the statute limiting the liability of owners and occupiers for unintentional injuries to recreational users which would limit the scope of said section to land primarily used for other purposes but with incidental recreational uses as well. Land which was primarily used for recreational purposes having other incidental uses would certainly apply under the statute as well. Here, both Riksem and Wild were using the Burke-Gilman trail for recreational purposes on the day of the accident.

Riksem, 47 Wash. App. at 512 (emphasis added). *Camicia* did not overrule the *Riksem* Court's conclusion that immunity applied to land which permitted uses other than recreation such as commuting, so long as recreation was a primary purpose of the land. *Camicia*, 179 Wn.2d at 698-99. *See, also, Archer v. Marysville Sch. Dist*., 195 Wn.App. 1014 (2016) (Reasoning that *Camicia* does not stand for "the proposition that the land must be exclusively used for recreational purposes[.]").

RCW 4.24.210 is designed to encourage owners to open recreational land to the public. The plain text of the statute does not deny application of immunity where some other uses of the land may occur so long as the land is also open for recreational use. RCW 4.24.210 specifically lists activities such as "bicycling," "boating," "aviation activities to include, but not limited to, the operation of airplanes," "horse-riding," as well as "skate boarding or other nonmotorized wheel based activities" which, by their very nature, permit both recreational as well as transportation or commuter functions. Trails that may be used for recreation as well as commuter purposes are nowhere excluded from the "rural, or urban" lands that the statute seeks to make available to the public. "If an individual is commuting from one point to another, by either walking, running, or bicycling, said individual is at least secondarily

gaining the benefits of recreation even though his primary goal may be the actual act of commuting." *Riksem*, 47 Wn. App. at 512.

The trial court found from the evidence presented that "the primary purpose of this Foothills Trail is recreation." RP 23. That finding has not been challenged by Ms. Lockner. It is also undisputed that Ms. Lockner was using the trail for recreational bicycling at the time of her injury. Ms. Lockner acknowledged to the trial court that the trail served recreational purposes. It was also undisputed that the trail was only open for nine hours a day for recreation and was otherwise closed, and that the trail was not a transportation corridor. The trial court's ruling was entirely consistent with *Camicia* as the evidence demonstrated that recreation is a primary purpose of the Foothills Trail, not an incidental one. This Court should reverse the Court of Appeals and affirm the trial court's order on summary judgment.

B. THE COURT OF APPEALS CORRECTLY HELD THAT RCW 4.24.210 EXTENDS TO CLAIMS OF NEGLIGENCE

Interpretation of a statute is a question of law and our review is de novo. *Multicare Med. Ctr. v. State*, 114 Wn.2d 572, 582, 790 P.2d 124 (1990). In construing a statute, the court's fundamental objective is to ascertain and carry out the intent of the legislature. *State v. Morales*, 173 Wn.2d 560, 567, 269 P.3d 263 (2012); *Segura v. Cabrera*, 184 Wn.2d

587, 590, 362 P.3d 1278 (2015). Courts endeavor to adopt that interpretation which best advances the legislative purpose of an act and avoids unlikely, absurd, or strained consequences. *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990). The court first looks to the plain meaning of words used in a statute. *State v. McDougal*, 120 Wn. 2d 334, 350, 841 P.2d 1232, 1241 (1992). Plain language that is not ambiguous does not require construction. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). While legislative intent cannot overcome "an otherwise discernible, plain meaning" on the face of the statute, courts interpret the terms of a statute in harmony with its purpose. *Camicia v. Howard S. Wright Const. Co.*, 179 Wash. 2d 684, 693–94, 317 P.3d 987, 991 (2014).

Washington's recreational land use statute, RCW 4.24.210, was enacted in order "to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon". *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 846 P2d 522 (1993); *Cregan v. Fourth Mem'l Church*, 175 Wn.2d 279, 283, 285 P.3d 860, 863 (2012). The Legislature sought to achieve this recreational goal by eliminating landowner liability except in three situations: (1) when the entrant is charged a "fee of any kind", (2) when

the entrant is injured by an intentional act, or (3) when the entrant sustains injuries "by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted." *Van Dinter*, 121 Wn.2d at 42–43 (emphasis added); RCW 4.24.210.

The Legislature's declared purpose in enacting the Recreational Land Use Act is found in RCW 4.24.200, which provides:

> The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged **by the acts or omissions of persons entering thereon**.

RCW 4.24.200 (emphasis added). To advance that purpose and shield landowners from all liability other than intentional injuries, the legislature enacted the immunity provision at issue, which provides:

> Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hang gliders, parachutes, and paragliders, rock climbing, the

> riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, **shall not be liable for unintentional injuries to such users**.

RCW 4.24.210(1) (emphasis supplied).

The only exception to the immunity provision is found in RCW 4.24.210(4)(a), which provides:

> Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

RCW 4.24.210.

Courts have previously extended immunity under RCW 4.24.210 to negligence claims. For example, in *Riksem v. City of Seattle*, 47 Wn.App. 506, 736 P.2d 275 (1987), a bicyclist was injured while he rode the 12 ½ mile length of the Burke-Gilman Trail in Seattle. Id. at 508. As Riksem attempted to pass another cyclist he accelerated and collided with a jogger directly in front of him, resulting in considerable injury to both of them. *Id*. Riksem sued the City of Seattle for negligence, asserting the City had negligently designed, constructed, and maintained the trail. *Id*. While Riksem asserted that inadequate signage caused his injuries, the Court of Appeals stated "the injury resulted from activity, not from a

condition of the land." *Id*. at 511. The Court of Appeals concluded that there was no evidence that the City had intended Riksem's injury and ruled that the municipality was immune under RCW 4.24.210. *Id*. at 512-513. Other courts have dismissed negligence claims based upon immunity under RCW 4.24.210. *See e.g. McCarver v. Manson Park and Irrigation District*, 92 Wn.2d 370, 597 P.2d 1362 (1979); *Van Dinter v. City of Kennewick,* 121 Wn.2d 38, 846 P.2d 522 (1993); *Jewels v. City of Bellingham*, 183 Wn.2d 388, 353 P.3d 204 (2015); *Hively v. Port of Skamania*, 193 Wn.App. 11, 372 P.3d 781 (2016); *Swinehart v. City of Spokane,* 145 Wn.App. 836, 187 P.3d 345 (2008).

In *Power v. Union Pacific Railroad Co.*, 655 F.2d 1380 (9th Cir 1981), plaintiff brought a wrongful death action alleging her daughter's death resulted from negligent operation of a Union Pacific train by the engineer and brakeman. *Id*. at 1381-1382. Plaintiff's daughter had entered a railroad track some 250 feet ahead of a speeding train that subsequently struck and killed her. *Id*. at 1382. Plaintiff asserted, and the trial court agreed, that the engineer breached a duty to apply the train's brakes as soon as he saw the victim and her friends near the tracks sometime earlier. *Id*. at 1384. On appeal, Union Pacific asserted the trial court erred in rejecting application of RCW 4.24.210 to the negligence claim. *Id*. at

1386. Ruling that the asserted negligence of the engineer was within the scope of the immunity statute, the Ninth Circuit stated:

> [T]he district court erroneously held that the engineer's conduct was not "unintentional" within the meaning of section 4.24.210. The statute refers to "unintentional injuries" to property users, not "unintentional conduct." We fail to see how the engineer and brakeman could be said to have intended [the victim's] injury.

Power, 655 F.2d at 1387. While ruling that the requirements of RCW 4.24.210 had otherwise been met by the railroad, the Ninth Circuit remanded the case because the record had not been sufficiently developed on the issue of whether "members of the public were allowed to use the land for recreational purpose." *Id*. at 1388.

Division Two properly held that RCW 4.24.210 extends immunity to negligence claims. The statute expressly provides that owners who open recreational land "shall not be liable for unintentional injuries to such users." It is logical that the Legislature expected owners who opened land for recreational purposes would also perform upkeep activities such as mowing, landscaping, trash removal, etc., designed to maintain both the functionality and aesthetic value of the land for recreational users. Indeed, it would be illogical and absurd to believe that the Legislature considered otherwise, and such interpretations are to be avoided. The Legislature did not except from immunity any acts or omissions that may occur in the

course of maintaining recreational properties. To the contrary, RCW 4.24.200 makes it clear that the purpose of the immunity provision is to limit the liability of landowners from "injury or damage" that results from "the acts or omissions of persons entering thereon" insofar as the resulting injury or damage was not intentional. To deny immunity for injuries that may occur as a result of acts or omissions performed to maintain recreational properties would severely undermine if not outright defeat the statutory purpose of encouraging owners to open properties for recreational use. If maintenance activities such as mowing performed in the upkeep of property are not immune from liability, landowners will have little incentive to open properties to the public where proper preservation of the property is desired. That would likely lead to either fewer owners opening properties, or the foregoing of maintenance resulting in derelict properties that are less aesthetically desirable, less functional, and perhaps more dangerous for recreational use. Either outcome defeats the legislative purposes of the statutes and runs counter to the legislature's stated scope of immunity under RCW 4.24.200 and .210.

The Court of Appeals correctly held that the immunity provision encompasses negligence claims. The decision below should be affirmed.

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IV. CONCLUSION

This Court should reverse the Court of Appeals decision on the basis that immunity under the Recreational Land Use Act applies where land held open for a primary purpose of recreation also serves a commuter use. The Foothills Trail, as demonstrated by the uncontested evidence below, indisputably serves a primary purpose of recreational use. The Court should affirm the Court of Appeals where it correctly held that the Act applies to negligence claims. The trial court's granting of summary judgment should be affirmed.

RESPECTFULLY SUBMITTED this 3rd day of November, 2017.

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CERTIFICATE OF SERVICE

On November 3, I hereby certify that I electronically filed the foregoing SUPPLEMENTAL BRIEF OF PETITIONER using the Washington State Appellate Courts' Secure Portal which will send notification of such filing to the following:

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